

CHAPTER 543

COMMENCEMENT OF CIVIL ACTIONS

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**543.01 ACTIONS, HOW COMMENCED.** Civil actions in the district court shall be commenced by the service of a summons as hereinafter provided.

[R. L. s. 4102] (9224)

**543.02 REQUISITES OF SUMMONS; NOTICE.** The summons shall be subscribed by the plaintiff or his attorney, be directed to the defendant, and require him to serve his answer to the complaint on the subscriber, by copy, at a specified place within the state where there is a post-office, within 20 days after the service on him of such summons, exclusive of the day of service. It shall also notify him, in substance, that if he fails so to serve his answer:

(1) If the action be for the recovery of a debt or a liquidated money demand only, that the plaintiff will take judgment for an amount specified therein;

(2) In other actions, that he will apply to the court for the relief demanded in the complaint.

[R. L. s. 4103] (9225)

**543.03 SUMMONS, BY WHOM SERVED; FEES; MILEAGE.** The summons may be served by the sheriff of the county in which the defendant is found, or by any other person not a party to the action; but, if served by a person other than an officer authorized by law to make such service, no fees or mileage shall be allowed therefor.

[R. L. s. 4104] (9226)

**543.04 SERVICE OF COMPLAINT; APPEARANCE.** A copy of the complaint shall be served with the summons, unless the complaint be filed with the clerk, in which case the summons shall contain a notice of such filing. If it be not so served, and the defendant shall appear in the action within ten days after the service of the summons, the plaintiff, within five days after such appearance, shall serve the complaint, by copy, on the defendant or his attorney. The defendant shall then have at least ten days in which to answer the same.

[R. L. s. 4105] (9227)

**543.05 MANNER OF SERVICE OF SUMMONS; ON NATURAL PERSONS.** Service of the summons on natural persons residing or being within the state shall be made by delivering a copy thereof, as follows:

(1) To the defendant personally;

(2) If the defendant have a resident guardian, appointed for any purpose, to such guardian also;

(3) If he be a minor under the age of 14 years, and have no such guardian, to his father also, or to his mother, or, if he have neither within the state, to the person having the control of such minor, or with whom he resides, or by whom he is employed.

In all such cases it shall be deemed a personal service of the summons if the copy thereof be left at the house of the usual abode of the person to be served, with some person of suitable age and discretion then residing therein.

[R. L. s. 4106] (9228)

**543.06 MANNER OF SERVICE ON PUBLIC CORPORATIONS.** Service of a summons upon municipal or quasi municipal corporations shall be made by delivering a copy thereof as follows:

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(1) If the action be against a city, village, or other incorporated place, to its chief executive officer, or, in his absence, to its clerk;

(2) If against a county, to the chairman of the county board or to the county auditor;

(3) If against a town, to the chairman of the town board or to the town clerk;

(4) If against a school district, to any member of its board of trustees or other governing body;

(5) If against any other public board or body subject to suit, to any member thereof.

In any of the cases enumerated in this section, if it be made to appear that service cannot be made as herein provided, the court may direct the manner of such service.

[R. L. s. 4107] (9229)

**543.07 MANNER OF SERVICE ON THE STATE.** In all actions and proceedings to which the state may lawfully be made a party, the summons and other papers therein shall be served on the attorney general, or, in his absence, upon one of his assistants.

[R. L. s. 4108] (9230)

**543.08 MANNER OF SERVICE ON PRIVATE CORPORATIONS.** If the action be against a private domestic corporation, the summons may be served by delivering a copy thereof to its president, vice-president, secretary, cashier, or treasurer, or to any director or managing agent thereof.

If such domestic corporation have no officer within the state upon whom service can be so made, of which fact the return of the sheriff that none can be found in his county shall be conclusive evidence, service of the summons upon it may be made by depositing two copies thereof with the secretary of state, which shall be deemed personal service upon such corporation. One of such copies shall be filed by such secretary, and the other forthwith mailed by him to the corporation, if the place of its main office be known to him or be disclosed by the files of his office.

If the defendant be a foreign corporation the summons may be served by delivering a copy to any of its officers or agents within the state, provided that any foreign corporation having an agent in this state for the solicitation of freight and passenger traffic or either thereof over its lines outside of this state, may be served with summons by delivering a copy thereof to such agent. If a foreign insurance corporation, two copies shall be delivered to the insurance commissioner, who shall file one in his office and forthwith mail the other postage prepaid to the defendant at its home office.

If such foreign corporation shall have appointed a resident agent authorized to accept service of process, and shall have caused such appointment to be filed and recorded as required or authorized by law, delivery of a copy of the summons to such agent shall be deemed service thereof on such corporation.

[R. L. s. 4109; 1913 c. 218 s. 1] (9231)

**543.09 MANNER OF SERVICE ON EXPRESS COMPANIES.** In any action or proceeding against an express company, whether domestic or foreign, transacting business in the state, service of summons and of all notices and orders in any action or proceeding wherein such express company is a party may be made by delivering a copy thereof to any agent of such express company within the county in which the action or proceeding is begun, and such service shall have the same effect as though made pursuant to the provisions of section 543.08. If such company shall appear in an action or proceeding by a resident attorney, service of notices or orders in the action or proceeding shall thereafter be made upon such attorney.

[1921 c. 160 s. 1] (9232)

**543.10 MANNER OF SERVICE ON RAILWAY COMPANIES.** In any action or proceeding against a railway company, whether domestic or foreign, including proceedings under the right of eminent domain, service of the summons and of all notices required to be served therein may be made by delivering a copy thereof to any ticket or freight agent of such company within the county in which the

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action or proceeding is begun, with the same effect as though made pursuant to section 543.08. If such company shall appear in an action by a resident attorney, service shall thereafter be made upon such attorney.

[R. L. s. 4110] (9233)

### 543.11 SERVICE BY PUBLICATION; PERSONAL SERVICE OUT OF STATE.

In any of the cases mentioned in section 543.12 when the sheriff of the county in which the action is brought shall have duly determined that the defendant cannot be found therein and an affidavit of the plaintiff or his attorney shall have been filed with the clerk, stating the existence of one of such cases and that he believes the defendant is not a resident of the state, or cannot be found therein, and either that he has mailed a copy of the summons to the defendant at his place of residence, or that such residence is not known to him, service of the summons may be made upon such defendant by three weeks' published notice thereof. Personal service of such summons without the state proved by the affidavit of the person making the same, made before an authorized officer having a seal, shall have the same effect as the published notice herein provided for.

[R. L. s. 4111; 1913 c. 241 s. 1] (9234)

### 543.12 WHERE SERVICE BY PUBLICATION CONFERS JURISDICTION.

Such service shall be sufficient to confer jurisdiction:

(1) When the defendant is a foreign corporation, having property within the state;

(2) When the defendant, being a resident of the state, has departed therefrom with intent to defraud his creditors, or to avoid service, or keeps himself concealed therein with like intent; or has departed therefrom, or cannot be found therein, and has property or credits therein upon which the plaintiff has acquired a lien by attachment or garnishment;

(3) When the defendant is not a resident of the state, but has property therein, and the court has jurisdiction of the subject of the action;

(4) When the action is for a divorce, or a separation from bed and board, and the court shall have ordered that service be made by published notice;

(5) When the subject of the action is real or personal property within the state, in or upon which the defendant has or claims a lien or interest, or the relief demanded consists wholly or partly in excluding him from any such interest or lien;

(6) When the action is to foreclose a mortgage or to enforce a lien on real estate.

[R. L. s. 4112] (9235)

**543.13 SUMMONS NOT PERSONALLY SERVED, DEFENDANT MAY DEFEND; RESTITUTION.** If the summons be not personally served, the defendant, on application to the court before judgment and for sufficient cause, shall be permitted to defend; and, except in an action for a divorce, the defendant, in like manner, may be permitted to defend at any time within one year after judgment, on such terms as may be just. If the defense be sustained, and any part of the judgment has been enforced, such restitution shall be made as the court may direct.

[R. L. s. 4113] (9236)

**543.14 PROOF OF SERVICE.** Service of the summons and other papers shall be proved as follows:

(1) If made by the sheriff or other officer thereunto authorized by law, by his certificate; if by any other person, by his affidavit; or

(2) By the written admission of the party served;

(3) If by published notice, by the affidavit of the printer, or of his foreman or clerk, and by that of the person who mailed a copy of the summons, if one was mailed.

If service be made otherwise than by published notice, the proof shall state the time, place, and manner thereof.

[R. L. s. 4114] (9237)

**543.15 JURISDICTION, WHEN ACQUIRED; APPEARANCE.** The court shall have jurisdiction of the defendant from the time of the service of the summons or other process upon him, and service by published notice shall be deemed complete at the expiration of the prescribed period of publication. A voluntary appearance by the defendant shall be equivalent to personal service, unless the same be made for the sole purpose of attacking the jurisdiction.

[R. L. s. 4115] (9238)

**543.16 APPEARANCE AND ITS EFFECT.** A defendant appears in an action when he answers, demurs, or gives the plaintiff written notice of his appearance, after which he shall be entitled to notice of all subsequent proceedings therein. Until such appearance, notice of ordinary proceedings in the action need not be given.

[R. L. s. 4116] (9239)

**543.17 SERVICE OF NOTICES AND OTHER PAPERS.** Where a party who has appeared resides out of the state and has no attorney in the action, the service of notices and other papers may be made by mail if his residence is known; if not known, on the clerk for him. Where a party, whether resident or non-resident, has an attorney in the action, service shall be made upon the attorney instead of the party. If the attorney shall have removed from the state, such service may be made upon him personally either within or without the state, or by mail if his residence is known, and, if not known, then by mail upon the party, if his residence is known, whether within or without the state. If the residence of neither the party nor his attorney is known, service may be made upon the clerk for the attorney. This section shall not apply to the service of a summons or any process, or of any paper to bring a party into contempt.

Personal service shall mean:

(1) If upon the attorney, leaving a copy with him; or, if he be absent from his office, with his clerk therein or other person having charge thereof; or, if there be no one in charge of the office, leaving such copy, between 6 o'clock a.m. and 9 o'clock p. m., in a conspicuous place therein; or, if the office be closed, leaving it at the house of his usual abode, with some person of suitable age and discretion residing therein;

(2) If upon a party, delivering the copy to him, or leaving it at the house of his usual abode, between 6 o'clock a.m. and 9 o'clock p.m., with a person of suitable age and discretion residing therein.

[R. L. ss. 4117, 4118] (9240, 9241)

**543.18 SERVICE BY MAIL; WHEN AND HOW MADE; EFFECT.** Service by mail shall be made by depositing a copy of the paper to be served in the post-office, addressed to the person on whom service is to be made at his place of residence, with the postage prepaid. Such service may be made whenever the person serving the paper and the person to be served reside in different places, between which there is regular communication by mail. The party so served shall have double the time allowed in case of personal service.

[R. L. s. 4119] (9242)